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SUBJECT: UNGA THIRD COMMITTEE TAKES ACTION ON THE ICESCR  
OPTIONAL PROTOCOL, RACISM, THE DEATH PENALTY, AND MORE

¶1. SUMMARY: On November 18, the UN General Assembly Third Committee took action on five draft resolutions, adopting four by consensus, including a draft resolution on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Russia's draft resolution on racism, racial discrimination, and xenophobia passed after a vote. The Third Committee also took action on seven proposed amendments to a draft resolution on moratorium of the death penalty, rejecting each in a separate vote. The Committee adopted the draft resolution itself on November 20 after hours of further procedural wrangling and oral amendments, by a vote of 105-48(U.S.)-31. END SUMMARY

DRAFT RESOLUTIONS ADOPTED BY CONSENSUS  
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¶2. On November 18, the UN General Assembly (UNGA) Third Committee adopted the following resolutions by consensus: A/C.3/63/L.54, entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees;" A/C.3/63/L.47, entitled "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;" A/C.3/63/L.48, entitled "Universal realization of the right of peoples to self-determination;" and A/C.3/63/L.18/Revision 1, entitled "Torture and other cruel, inhuman or degrading treatment or punishment." The United States is a co-sponsor of draft resolution A/C.3/63/L.18/Revision 1.

EOPS ON THE ICESCR OPTIONAL PROTOCOL DRAFT RESOLUTION  
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¶3. Twenty delegations, including the United States, issued Explanation of Positions (EOPs) on draft resolution A/C.3/63/L.47. Ambassador T. Vance McMahan delivered the U.S. EOP before the adoption of the draft resolution; the complete texts of this (and all other) U.S. statements can be found at [www.usunnewyork.usmission.gov](http://www.usunnewyork.usmission.gov). Many delegations noted that while all human rights were equal, economic, social and cultural rights were inherently different than civil and political rights, particularly in that they were not easily justiciable and were to be progressively realized. The UK, Denmark, Liechtenstein, and Poland expressed their reservations regarding the Optional Protocol's defined parameters for an individual complaint mechanism. Many delegations underscored that the ICESCR mechanism should not be applicable to the right to self-determination as it is not subject to the International Covenant on Civil and Political Rights complaint mechanism, and is a group, rather than an individual, right. Many of the speakers emphasized the point that the intent of the Optional Protocol was not to second-guess States' "reasonable policy choices" or to interfere with States' decisions regarding programming and the dedication of resources for the promotion and protection of economic, social, and cultural rights. Japan and Liechtenstein also expressed concern regarding last-minute amendments made to the text. Fuller reflection of the points made by delegations can be found at [www.un.org/apps/pressreleases](http://www.un.org/apps/pressreleases).

## THE RUSSIAN RACISM DRAFT RESOLUTION

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¶4. The United States called for a vote on draft resolution A/C.3/63/L.49, entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance." The draft resolution passed with a vote of 122 in favor, one against (the United States), and 54 abstentions. Ambassador ¶T. Vance McMahan delivered the U.S. Explanation of Vote (EOV) before the vote. France, on behalf of the European Union (EU), also issued an EOV statement, stressing that the EU was committed to fighting racism, racial discrimination, xenophobia, and related intolerance, including neo-Nazism. However, the speaker explained, because the draft resolution did not address concerns expressed by the EU and some other delegations, namely by not following the relevant provisions in the Universal Declaration of Human Rights, the EU chose to abstain in this vote.

## THE DEATH PENALTY MORATORIUM DRAFT RESOLUTION

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¶5. After opening consideration of draft resolution A/C.3/63/L.19/Revision 1, entitled "Moratorium on the use of the death penalty," Chile (the main sponsor of the draft resolution) called for a vote on each of the seven proposed amendments submitted as separate actions. Each amendment was rejected, with the following vote counts: A/C.3/63/L.62: 81 against, 67 in favor, and 23 abstentions; A/C.3/63/L.63: 87 against, 60 in favor, and 22 abstentions; A/C.3/63/L.64: 87 against, 57 in favor, and 22 abstentions; A/C.3/63/L.65: 86

against, 59 in favor, and 22 abstentions; A/C.3/63/L.66: 87 against, 62 in favor, and 20 abstentions; A/C.3/63/L.67: 88 against, 59 in favor, and 20 abstentions; and A/C.3/63/L.68: 87 against, 56 in favor, and 24 abstentions. The United States abstained on A/C.3/63/L.62 and A/C.3/63/L.66 and voted in favor of the others.

¶6. The many general statements and EOV statements during consideration of these proposed amendments reflected the deep division remaining among Member States on the question of the death penalty. The sponsors of the seven proposed amendments argued that the draft resolution was not simply procedural, as held by its sponsors, rather, it was another attempt to abolish the death penalty. The proposed amendments, they said, were an attempt to balance the draft resolution and affirm States' right to determine their own domestic criminal justice systems. The main sponsors of the proposed amendments expressed frustration that the sponsors of the draft resolution did not take into consideration the perspectives of other Member States, to the extent that they would not allow the proposed amendments to be included in the same document as the draft resolution. The sponsors of the draft resolution argued that the proposed amendments were unnecessary and would weaken the spirit of the draft resolution.

¶7. The ensuing debate extended far beyond the content of the draft resolution and the proposed amendments. The discussion largely was dominated by delegations insisting that the use of the death penalty was a domestic decision, and that efforts to abolish it or establish a moratorium were contrary to the UN Charter and constituted interference in sovereign States' internal affairs. The Organization of Islamic Conference members and Singapore, among others, emphasized that the death penalty was a criminal justice decision and a means of maintaining social order rather than a question of human rights. The few death penalty opponents who spoke up during the meeting argued that the claim that efforts to abolish the death penalty violated the UN Charter was taking the Charter's sovereignty provision out of context. They said that States were obligated to fulfill their human rights obligations, and that the death penalty ultimately was a human rights issue. But, as New Zealand put it, the States

against the use of the death penalty were not trying to impose their view on other States, as lamented by the draft resolution's opponents, rather, this draft resolution, like all UNGA resolutions, was a "statement of moral authority" as agreed by an international body, which could not be forced onto any Member State.

18. The procedural maneuvering and debate on the draft resolution continued on November 20. The Committee rejected a proposed oral amendment to Operative Paragraph (OP) two in a vote of 88 against, 55 in favor, and 24 abstentions. The Committee rejected a similar proposed oral amendment to OP three in a vote of 90 against, 53 in favor, and 23 abstentions. After much back-and-forth regarding the rules of procedure, the Committee rejected a proposal to vote separately on Preambular Paragraph one, in a vote of 88 against, 53 in favor, and 24 abstentions, and a proposal to vote separately on OP one, in a vote of 88 against, 55 in favor, and 24 abstentions. The Committee then voted on the draft resolution as a whole, adopting it in a vote of 105 in favor, 48 against, and 31 abstentions. The United States voted in favor of the two proposed oral amendments and the two procedural votes, and against the draft resolution, issuing an EOY following its adoption.

19. General statements and EOYs on November 20 were very similar to those from November 18. The discussion again was dominated by countries opposed to the draft resolution, with several speakers noting their disappointment that the draft resolution's sponsor's had "forced" the resolution through committee by virtue of sheer numbers, rather than taking into consideration other States' concerns. Many of the draft resolution's opponents concluded that it was not yet time for the UN to address the question of the death penalty, due to the marked lack of consensus on the issue. As Singapore put it, this question was "perhaps the most divisive issue in the UN."

Wolff